

ESA Overview Module 4 – Section 7, Interagency Consultation Text

Effects Determination (slides 25 - 30)

Effects Determination

As part of the consultation process, it is the responsibility of the action agency to determine how the proposed action affects listed species and designated critical habitat.

If a listed species or critical habitat is present in the action area, the outcome of the effects determination can be:

A “no effect” determination, which means there is NO effect what-so-ever to a listed species or critical habitat. No part of the action can have an effect, not even a beneficial effect. If the determination is no effect, then no further consultation is required.

The second option is a “may affect” determination, which means that consultation will continue as either informal or formal. Consultation, if you’ll recall, is triggered by a may affect determination.

Consultations can be either **informal** or **formal**. This flow chart shows both the formal and informal consultation process. Let’s talk first about informal consultation.

Informal consultation is a process through which Federal agencies can meet their consultation requirement for actions that are “not likely to adversely affect” listed species or critical habitats. Information on consultation can be found in the regulations at 50 CFR 402.13 and 50 CFR 402.14.

Informal consultation includes a variety of communication methods such as phone calls, e-mails, site visits, meetings, and letters.

Informal consultation:

- helps identify affected species and/or critical habitat

- helps determine the potential effects of the proposed project

- allows agencies to explore ways to reduce or avoid adverse effects and

- helps determine whether formal consultation is necessary

So, how do you determine whether the action is Not Likely to Adversely Affect a listed species or adversely modify designated critical habitat?

Well, the “Not Likely to Adversely Affect” conclusion is appropriate only if the effects to a species or critical habitat are likely to be wholly beneficial, discountable, or insignificant.

Beneficial means wholly positive with no negative component

Discountable effects are those that are extremely unlikely to occur. Discountable effects relate to the frequency of the effect.

Insignificant effects relate to the size or magnitude of the impact and should never reach the scale where take occurs. A person would not be able to meaningfully measure an insignificant effect.

If a may affect, but not likely to adversely affect determination is made, the written effects analysis is submitted to the Services for concurrence. If the Service concurs in writing with the not likely to adversely

affect determination, consultation is concluded and the action agency has no further consultation obligations.

If, however, the Federal agency determines that the Federal action is “Likely to Adversely Affect” a listed species or critical habitat, the Federal agency would initiate mandatory formal consultation *in writing*, with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service.

If you can’t make a case for not likely to adversely affect, then the only other option is likely to adversely affect. The action agency has the responsibility to use the best scientific data available to come to a determination.

In order to initiate formal consultation, the action agency prepares a document, often called a Biological Assessment.